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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,535	11/06/2001	David W. Boykin	5470-309	2714

20792 7590 03/19/2003

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EXAMINER

SACKY, EBENEZER O

ART UNIT

PAPER NUMBER

1626

DATE MAILED: 03/19/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>10/008,535</b>	Applicant(s) <b>BOYKIN ET AL.</b>
Examiner <b>EBENEZER SACKY</b>	Art Unit <b>1626</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Feb 6, 2003

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

4)  Claim(s) 1-19 is/are pending in the application.

4a) Of the above, claim(s) 8-10 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 15 is/are rejected.

7)  Claim(s) 1-7, 11-14, and 16-19 is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on Nov 6, 2001 is/are a)  accepted or b)  objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

Claims 1-19 are pending.

Receipt of the Information Disclosure Statement filed on 09/30/02 is acknowledged and has been entered into the file.

### ***Response to Restriction***

Applicant's election without traverse of Group I, claims (1-19 in part) species of Example 5a, in Paper No. 8 is acknowledged.

The following generic concept as depicted in claim 1 has been identified for examination along with the elected embodiment: X is O; R<sup>1</sup> and R<sup>2</sup> are as defined; R<sup>3</sup> and R<sup>4</sup> are as defined; R<sup>5</sup> is hydrogen; R<sup>6</sup> is hydrogen, alkyl or NR<sub>7</sub>R<sub>8</sub> wherein R<sub>7</sub>R<sub>8</sub> is hydrogen or alkyl. The remaining subject matter of claims 1-7 and 11-19 in part and claims 8-10 in their entirety stands withdrawn from further consideration under 37 CFR 1.142(b) as constituting other patentably distinct inventions.

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The withdrawn subject matter of claims 1-7 and 11-19 in part and claims 8-10 in their entirety is properly restricted as said subject matter differs in structure and element from the elected subject matter so as to be patentably distinct therefrom, i.e., a reference which anticipated the elected subject matter would not render obvious the withdrawn subject matter and the fields of search are not co-extensive.

***Claim Objection***

The preparation of the composition as defined in claim 15, involves admixing the compound with the carrier. The objection would be obviated by changing "formulating" to ---admixing---.

***Specification***

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-7, 11-14 and 16-19 are objected to as containing non-elected subject matter. This objection may be overcome by limiting the claims to the elected subject matter identified supra.

U.S. Patent number 5,594,138 is cited to show the state of the art.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to E. Sackey whose telephone

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number is (703) 305-6889. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane, can be reached on (703) 308-4537. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

EOS

March 14, 2003

Joseph K. McKane

Joseph K. McKane

Supervisory Patent Examiner

Art Unit 1626, Group 1600

Technology Center 1